

Claimant filed this claim for a specific accident on April 8, 1999, followed by overuse injuries through claimant's last day of work with respondent on or about February 16, 2000. Claimant filed three Applications for Hearing with the Division of Workers Compensation alleging in all three applications injuries to the "spine and all related systems, right shoulder and upper extremities." But at the December 1, 2000 regular hearing, the Judge clarified that claimant was at that time claiming an April 8, 1999 accident and injuries to the back, right shoulder, and bilateral upper extremities.

In the April 5, 2001 Award, Judge Moore awarded claimant permanent partial disability benefits for a six percent functional impairment to the right upper extremity, including the shoulder. Claimant contends the Judge erred. Claimant argues she also permanently injured her neck and is, therefore, entitled to receive permanent disability benefits for an "unscheduled" injury. Claimant requests the Board to award her a work disability (a disability greater than the functional impairment rating) in the range of 23 to 31 percent.

Conversely, respondent and its insurance carrier request the Board to affirm the Award.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The parties stipulated that claimant met with personal injury by accident arising out of and in the course of employment on April 8, 1999. At the time of the accident, claimant was loading packages into an airplane at the Great Bend, Kansas, airport. High winds caught the doors of claimant's package car, causing the doors to strike claimant several times on the right side of her body.
2. Shortly after the incident, claimant reported that she felt battered. After completing her duties and going home, claimant began having neck spasms and pain in her right shoulder.
3. Immediately before the incident, claimant's neck and right shoulder were symptom-free. But at the December 2000 regular hearing, claimant explained that following the accident she was experiencing intermittent neck pain, which would be severe two or three times per week.
4. Claimant received conservative medical treatment for her injuries consisting of injections, anti-inflammatory medications, chiropractic treatment, exercise, and physical therapy. Claimant first saw Dr. Steven Tyree, the company doctor, who referred her to orthopedic surgeon Dr. C. Reiff Brown. Claimant then sought chiropractic treatment from Dr. Aaron D. Sauer. After a period of chiropractic treatment, respondent and its insurance carrier sent claimant to Dr. Chris D. Fevurly of Lawrence, Kansas, for an opinion as to whether chiropractic treatment should continue. Claimant then returned to Dr. Tyree, who referred her to Dr. Randall K. Hildebrand as Dr. Brown had moved away.
5. Respondent and its insurance carrier presented the testimony of Dr. Brown, who is board-certified in orthopedic surgery and is also a member of the American Academy of Disability Evaluating Physicians. The doctor saw claimant on July 20, July 29, and September 16, 1999, and January 8, 2001.

6. At the July 20, 1999 visit, claimant advised Dr. Brown that she had discomfort in the upper part of her right shoulder and in the side of her neck extending downward into the shoulder blade. The doctor determined that claimant had normal range of motion in the right shoulder and neck and believed that claimant had sprained her right shoulder and the muscles around the shoulder blade. On July 29, 1999, the doctor again found that claimant not only had normal range of motion in the right shoulder and neck but also experienced no pain on movement. The doctor advised claimant to return in six weeks for the final evaluation.

7. On September 16, 1999, Dr. Brown determined that claimant had normal range of motion in the right shoulder but she did have a weakly positive impingement sign in that shoulder, along with some tenderness in the upper trapezius area. Claimant also complained of pain and tenderness up into the side and back of the neck, which the doctor felt was commonly associated with shoulder problems. Because the doctor believed claimant was developing an impingement in the shoulder, the doctor recommended that claimant avoid frequently using the right hand above shoulder level, avoid frequently reaching more than 18 inches from the body with the right hand, and avoid lifting above shoulder level.

8. Dr. Brown last saw claimant in January 2001. Claimant advised the doctor that she had continued to work for respondent and experienced increased symptoms until she was placed on leave sometime in February 2000. The doctor examined claimant and found that she did not have any muscle atrophy around the neck, shoulders, shoulder blades, or shoulder girdles. There was a mild tenderness in the right lower cervical paraspinal muscles but most of the tenderness was in the upper trapezius on the right and extended down to the upper scapular muscles. Claimant had slight range of motion loss in the right shoulder but none in the neck. The doctor diagnosed mild acromial impingement syndrome and rotator cuff tendinitis in the right shoulder. Dr. Brown found no evidence of impairment in claimant's neck.

9. During the various visits in which Dr. Brown saw claimant, the doctor never found anything to lead him to believe that claimant had symptomatic pathology in her neck.

10. Because Dr. Brown found lost range of motion in the right shoulder and lost strength in the upper extremity, the doctor rated claimant as having a six percent functional impairment to the right upper extremity due to claimant's work activities for respondent. In formulating the functional impairment rating, the doctor used the fourth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA Guides).

11. Claimant presented the testimony of Dr. Aaron D. Sauer, the chiropractic physician who has treated claimant off and on since August 1992. Claimant sought treatment from Dr. Sauer on December 21, 1999, reporting pain and spasm in the neck and bilateral shoulder pain.

12. Dr. Sauer believes claimant aggravated preexisting cervical arthritis at C4-5 and C5-6 causing paresthesia into her shoulders and hands. Using an unidentified edition of the *AMA Guides*, Dr. Sauer rates claimant as having a five percent whole person functional impairment. Dr. Sauer did not rate the impairment in the right shoulder and defers to the rating provided by Dr. Randall K. Hildebrand. Considering Dr. Hildebrand's rating for the shoulder and using the combined values chart from the *AMA Guides*, Dr. Sauer testified that claimant has a nine percent whole body functional impairment for her right shoulder and neck injuries.

13. According to Dr. Sauer, claimant was treated for degenerative cervical disc disease at the C5 level in 1992 and claimant would have had a five percent functional impairment for the neck as of that time. The doctor testified, in part:¹

Q. (Mr. Andersen) Well, you note in your clinical records her having degenerative disc disease at C5 disc level in 1992, correct?

A. (Dr. Sauer) Yes.

Q. And under the *AMA Guides*, then she would have a 5% impairment in 1992 as well, correct?

Mr. Roth: My objection is that she didn't receive any permanent restriction or impairment in 1992 and this requires the doctor to speculate, whereas today, she does have restrictions on her by all the physicians.²

Mr. Andersen: That's not a valid objection. Go ahead, Doctor, and answer.

Mr. Roth: I'd rather have the judge rule on it.

The Witness: By definition, yes.

14. Claimant also presented the testimony of board-certified orthopedic surgeon Dr. Randall K. Hildebrand, who saw and treated claimant various times between October 26, 1999, and September 19, 2000, for neck and shoulder discomfort. When Dr. Hildebrand first saw claimant, the doctor found some lost range of motion in claimant's neck, mild tenderness about the neck, and right shoulder symptoms in the acromial area. The doctor diagnosed cervical arthritis and possible impingement syndrome in the shoulder. But when the doctor saw claimant on September 19, 2000, the physical examination revealed full

¹ Deposition of Dr. Aaron D. Sauer, December 19, 2000; p. 24.

² The Board overrules the objection as it goes to the weight to be given the doctor's opinion rather than to its admissibility.

range of motion in the right shoulder and no obvious loss of motion in claimant's neck, although claimant did report mild discomfort along the trapezius and the right neck muscles. The neurological examination on the same date indicated that claimant had symmetrical reflexes throughout the right upper extremity.

15. In May 2000, Dr. Hildebrand wrote to claimant's attorney recommending a neurological evaluation including nerve conduction studies of the right upper extremity and cervical spine. In that letter, the doctor rated claimant as having a six percent functional impairment rating to the upper extremity, which converted to a four percent whole person rating, according to the fourth edition of the *AMA Guides*. But at his October 2000 deposition, Dr. Hildebrand testified that claimant also had a five percent whole body functional impairment due to the cervical arthritis and, therefore, had a nine percent whole body functional impairment for both the cervical spine and right shoulder conditions. The doctor attributed claimant's problems to both overuse and the April 1999 incident, which he believed seemed to be the primary aggravating event. The doctor testified, in part:³

Q. (Mr. Andersen) You say, "Predominantly overuse type of process," and then you go on to say, "in addition to some cervical arthritis." The overuse process, was that for the neck or was that to the shoulder?

A. (Dr. Hildebrand) Well, both. I'm talking about kind of the injury itself, in terms of her activities and job, as well as this one episode, which seemed to be the -- seemed to be the primarily -- the primary aggravating condition.

16. Finally, respondent and its insurance carrier provided the testimony of Dr. Chris D. Fevurly, who practices occupational medicine at Lawrence Memorial Hospital in Lawrence, Kansas, and two days per week conducts an independent business providing impairment evaluations at sites in Lawrence, Wichita, and both Kansas City, Kansas, and Kansas City, Missouri. The doctor is board-certified in both internal medicine and occupational medicine, and he is also a diplomate of the American Board of Independent Medical Examiners.

17. Dr. Fevurly saw claimant on one occasion in mid-February 2000 at the request of respondent's company doctor, Dr. Tyree. At that visit, claimant's major complaints were right shoulder pain and right elbow pain. Dr. Fevurly's examination revealed full range of motion in the neck and in the right shoulder but tenderness over the upper back and lower neck, along with a slightly positive sign in the right shoulder for either impingement or rotator cuff tendinitis. The doctor's neurological exam indicated claimant did not have either strength or sensory deficits, or any loss of deep tendon reflexes.

18. Dr. Fevurly did not find any obvious neurological abnormalities, but he was concerned that claimant might have some inflammation in one of the cervical nerve roots that could possibly explain the persistent pain that she was then experiencing in her right

³ Deposition of Dr. Randall K. Hildebrand, October 13, 2000; p. 23.

shoulder and down in her right elbow. Dr. Fevurly thought it might be reasonable to consider an electrodiagnostic test. Despite the recommendations from Dr. Fevurly and Dr. Hildebrand for electrodiagnostic tests, those apparently were not performed.

19. Based upon his examination of claimant and a review of the medical records from both Dr. Brown and Dr. Tyree, Dr. Fevurly determined there was no evidence to issue a functional impairment rating for either claimant's neck or right shoulder. The doctor also testified that the *AMA Guides* provide that the Diagnosis-Related Estimates are preferred over the range of motion model in determining an individual's functional impairment. Moreover, the range of motion model, and the tables contained therein, would not be applicable unless there is some loss of range of motion, which claimant did not have.

20. The Board agrees with Judge Moore that claimant has sustained a six percent functional impairment to the right upper extremity, including the shoulder. The Board concludes that claimant has not established that she sustained either permanent injury or permanent aggravation to the neck. Accordingly, the April 5, 2001 Award should be affirmed. The Board adopts the findings and conclusions set forth in the Award that are not inconsistent with the above and that are supported by the record.

21. The parties are reminded that physicians' charts contain many documents that have little, if any, evidentiary value. Accordingly, the parties are encouraged to introduce only those records that are material to the issues.

AWARD

WHEREFORE, the Board affirms the April 5, 2001 Award entered by Judge Moore.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kent A. Roth, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
Douglas M. Greenwald, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge

PAULA BIEBERLE

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DOCKET NO. 255,855

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